

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
LIND, KRAUSS, and PENLAND  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Sergeant JAMES A. MIZELLE III**  
**United States Army, Appellant**

ARMY 20130773

Headquarters, XVIII Airborne Corps and Fort Bragg (convened)  
Headquarters, Fort Bragg (action)  
Kirsten V.C. Brunson and Deidra J. Fleming, Military Judges  
Colonel Paul S. Wilson, Staff Judge Advocate (pretrial)  
Colonel Michael O. Lacey, Staff Judge Advocate (recommendation)  
Lieutenant Colonel Jerrett W. Dunlap, Jr., Staff Judge Advocate (addendum)

For Appellant: Major Vincent T. Shuler, JA; Captain Brian D. Andes, JA (on brief).

For Appellee: Colonel John P. Carrell, JA; Major Daniel D. Derner, JA; Captain Daniel M. Goldberg, JA (on brief).

23 March 2015

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SUMMARY DISPOSITION  
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Per Curiam:

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of conspiracy to obstruct justice and aggravated sexual assault in violation of Articles 81 and 120, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. §§ 881, 920 (2012). Appellant was sentenced to a dishonorable discharge, five years confinement, and reduction to the grade of E-1. The convening authority approved the adjudged sentence.

This case is before the court for review under Article 66, UCMJ. Appellant assigns one error alleging dilatory post-trial processing and raises additional matters pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), one of which warrants brief remark and relief.

Appellant was sentenced on 9 September 2013. He requested deferral of automatic forfeitures on 10 September 2013. On the same day, the convening authority denied that request.

On 22 January 2014, appellant's defense counsel requested the convening authority to "waiv[e] the automatic forfeitures for the benefit of his family for the maximum of 6 months." On 20 February 2014, in the addendum to the recommendation, the staff judge advocate (SJA) informed the convening authority that "[t]he defense requests that you waive the automatic forfeiture of all pay and allowances for the benefit of the accused's spouse and children for a period of 6 months." In the same addendum, the SJA recommended that the convening authority "approve the waiver of automatic forfeitures."

In an undated memorandum, presumably signed the same day as the addendum and action, the convening authority stated:

The request for waiver of automatic forfeitures of all pay and allowances is approved effective date of this action for a period of six months or until the date of release from confinement, release from active duty, or until the expiration of your term of service (ETS), whichever is earlier. This waiver of forfeitures in accordance with Article 58b is granted with the understanding that all monies that would otherwise be forfeited be paid for the benefit of the wife of the accused, Mrs. [KM].

However, in his action taken on 20 February 2014, the convening authority directed that "[t]he forfeiture of all pay and allowances as required by Article 58b, UCMJ, was waived effective this date for a period of six months, with direction that these funds be paid to the wife of the accused, Mrs. [KM]."

Appellant now argues that the unambiguous intent of the convening authority, as stated in his action, was to waive the automatic forfeitures for a period of six months; however, since appellant's ETS date was on 9 March 2014, the convening authority's intent could not be carried out. Appellant requests that we return his case to the convening authority for a new review and action so that the automatic forfeitures can be "retroactively deferred from 23 September 2013 until time of action."

In the interest of judicial economy, we will instead take the convening authority at his word in the action and order retroactive *waiver* of the automatic forfeitures to cover the period from 23 September 2013 to 20 February 2014, with the understanding that all monies that were forfeited during that time—if any and if

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yet unpaid—be paid for the benefit of the wife of the accused, Mrs. KM. *See United States v. Shumate*, 67 M.J.174-75 (C.A.A.F. 2008) (summ. disp.).

The findings of guilty and the sentence are AFFIRMED.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over a light blue circular stamp that contains the same seal as the one to the left.

MALCOLM H. SQUIRES, JR.  
Clerk of Court